



4191-02U

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA 2010-0044]

RIN 0960-AG89

How We Collect and Consider Evidence of Disability

AGENCY: Social Security Administration (SSA).

ACTION: Final Rule.

SUMMARY: We are modifying the requirement to recontact your medical source(s) first when we need to resolve an inconsistency or insufficiency in the evidence he or she provided. Depending on the nature of the inconsistency or insufficiency, there may be other, more appropriate sources from whom we could obtain the information we need. By giving adjudicators more flexibility in determining how best to obtain this information, we will be able to make a determination or decision on disability claims more quickly and efficiently in certain situations. Eventually, our need to recontact your medical source(s) in many situations will be significantly reduced as a result of our efforts to improve the evidence collection process through the increased use of Health Information Technology (HIT).

DATES: These rules are effective (INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER).

FOR FURTHER INFORMATION CONTACT: Brian Rudick, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-7102. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

We are making final the proposed changes to our rules regarding when we will recontact your medical source(s) to resolve an inconsistency or insufficiency in the evidence he or she provided. We proposed these changes in a Notice of Proposed Rulemaking (NPRM) we published in the Federal Register on April 12, 2011 (76 FR 20282). The preamble to the NPRM discussed the changes from the current rules and our reasons for proposing those changes.¹ Because we are adopting the proposed rules as published, we are not repeating that information here.

Public Comments on the NPRM

In the NPRM, we provided the public a 60-day comment period, which ended on June 13, 2011. We received 59 public comments. The comments came from a member of the public, members of the disability advocacy community, and several national groups of Social Security claimants' representatives.

¹ The NPRM is available at: <http://www.gpo.gov/fdsys/pkg/FR-2011-04-12/pdf/2011-8388.pdf>

We provide below summaries of the significant comments that were relevant to this rulemaking and our responses to those comments. We have tried to present the commenters' concerns and suggestions accurately and completely.

Comment: All of the commenters recommended that we keep our current requirement to recontact a person's medical source(s) first when we need to resolve an inconsistency or insufficiency in the evidence he or she provided. Some of these commenters believed that the proposed modification of this requirement was inconsistent with sections 223(d)(5)(B) and 1614(a)(3)(H) of the Social Security Act (Act), which require us to make "every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make [a] determination, prior to evaluating medical evidence obtained from any other source on a consultative basis." Other commenters believed that any modification of the current requirement would make it less likely that adjudicators would obtain evidence from a person's medical source(s), and more likely that they would try and obtain evidence from a consultative examination (CE) instead. These commenters speculated that some adjudicators may even purchase CEs to undermine evidence provided by treating sources and to circumvent our rules on how we weigh medical opinions from these sources.² These commenters said that treating sources are usually the most knowledgeable about a person's condition, and therefore, can provide the best evidence regarding disability. One of these commenters

² Those rules require us to generally give "more weight" to the opinions from a treating source and "controlling weight" when the treating source's opinions are well-supported and not inconsistent with other substantial evidence. See §§ 404.1527(d) and 416.927(d).

also said that recontacting treating sources is simpler and more effective than purchasing a CE, and another commenter noted that it is more convenient for claimants to see their treating sources than it is for them to attend CEs.

Response: We did not adopt the comments. We disagree with the commenters' concerns for several reasons. First, we disagree that modification of the requirement to recontact a person's medical source(s) first when we need to resolve an inconsistency or insufficiency in the evidence he or she provided violates sections 223(d)(5)(B) and 1614(a)(3)(H) of the Act or our regulations. As we explained in the NPRM, the proposed change "would not alter our rules in §§ 404.1512(d) and 416.912(d) that require us to make every reasonable effort to help you get medical reports from your medical sources when you give us permission to request the reports. Rather, the proposed change would apply only after we have made those reasonable efforts."³

As we noted in the NPRM, the rules in §§ 404.1512(d) and 416.912(d) first require us to "make every reasonable effort" to develop "your complete medical history for at least the 12 months preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application."⁴ Our regulations define "every reasonable effort" to include "an initial request for evidence from your medical source" and "one follow-up request" at anytime "between 10 and 20 calendar days after the initial request" if we did not receive the

³ 76 FR at 20283 (emphasis added).

⁴ 76 FR at 20283.

evidence.⁵ The recontact requirement applies only when we have already received evidence from a person's medical source; therefore, the revisions we are making to our rules here do not change the adjudicator's initial obligation to obtain medical evidence.

Because these final rules do not alter an adjudicator's obligations under §§ 404.1512(d) and 416.912(d), they are consistent with sections 223(d)(5)(B) and 1614(a)(3)(H) of the Act. Contrary to what some of the commenters seemed to assume, when Congress enacted sections 223(d)(5)(B) and 1614(a)(3)(H) of the Act in 1984, it did not intend to alter in any way the relative weight that we place on reports received from treating sources and consultative examiners or preclude us from obtaining consultative examinations when we find it necessary to obtain additional information or resolve conflicting evidence.⁶

Second, we disagree that these rules would permit adjudicators to purchase CEs rather than develop evidence from a person's medical source(s). We have regulations that govern the purchase of CEs, and those regulations provide, in part, that "Generally, we will not request a consultative examination until we have made every reasonable effort to obtain evidence from your own medical sources."⁷ Other CE regulations underscore this point by providing that "If your medical sources cannot or will not give us sufficient medical evidence about your impairment, we may ask you to have one or more physical

⁵ See §§ 404.1512(d)(1) and 416.912(d)(1).

⁶ S. Rep. No. 98-466, at 26 (1984).

⁷ Sections 404.1512(f) and 416.912(f). See also §§ 404.1517 through 416.1519t and 404.917 through 416.919t for our other rules governing the CE process.

or mental examinations.⁸ Our CE regulations also provide that before purchasing a CE, we will consider your "existing medical reports."⁹ It is also important to note that, subject to certain requirements, "your treating source will be the preferred source to do the purchased examination."¹⁰ We believe these regulations provide sufficient safeguards against any potential abuse of the CE process.

We agree with the commenters who stated that the treating source can be a valuable source of evidence about a person's condition. As we explained in the NPRM, there are times when we would still expect adjudicators to recontact a person's medical source first; that is, when recontact is the most effective and efficient way to obtain the information needed to resolve an inconsistency or insufficiency in the evidence received from that source. In the NPRM, we also gave two examples of situations where we would expect adjudicators to contact the medical source first, because the additional information needed is directly related to that source's medical opinion.¹¹ In fact, we expect that adjudicators will often contact a person's medical source(s) first whenever the additional information sought pertains to findings, treatment, and functional capacity, because the treating source may be the best source regarding these issues.

In further response to the commenters' concerns, we plan to conduct training on these final rules and will provide additional guidance on when adjudicators should

⁸ Sections 404.1517 and 416.917.

⁹ Sections 404.1519a(a)(1) and 416.919a(a)(1). These regulations also state that, in addition to "existing medical reports," we will consider "the disability interview form containing your allegations as well as other pertinent evidence in your file" before purchasing a CE.

¹⁰ Sections 404.1519h and 416.919h.

¹¹ 76 FR at 20283.

recontact a person's medical source(s) first for additional information. In addition, we are currently conducting comprehensive training regarding the development of evidence from a person's medical source(s) and related rules regarding the purchase of CEs. These training efforts are ongoing and for adjudicators at all levels of the disability determination process.

Comment: Several commenters believed that the proposed modification to the recontact requirement will sacrifice the best evidence from a person's medical source(s) for the sake of efficiency, and will, therefore, result in less accurate decision making by adjudicators.

Response: We disagree with the commenters. As we pointed out in response to the comments above, modifying the recontact requirement does not alter how we comply with the provisions of the Act that require us to make “every reasonable effort” to obtain medical evidence from the individual's treating physician “prior to evaluating medical evidence obtained from any other source on a consultative basis.” Therefore, the efficiencies we expect to achieve by the changes we are making in these rules will not come at the expense of those statutory provisions. As we also noted in response to previous comments, we expect adjudicators will often recontact treating sources first in some situations because they may be the best sources of information about a person's medical condition. Accordingly, we do not believe the modification to our recontact requirement will cause a qualitative change in the medical evidence we consider or produce less accurate disability determinations and decisions.

Comment: One commenter noted that in the preamble to the NPRM, we gave two examples of when we believed it would be "inefficient and ineffective" to require recontact with a person's medical source. In one example, the person's medical source did not specialize in the area of the impairment alleged and we needed more evidence about its current severity.¹² We indicated that we may supplement the evidence "by obtaining a CE with a specialist (such as a pulmonologist) who can perform the type of examination we need to determine disability under our rules."¹³ In the other example, the medical records received contain a reference that the claimant has returned to work; we explained that it may be more appropriate to verify this information with the claimant and obtain related information rather than recontact the medical source.¹⁴ The commenter suggested that we include some examples in the regulations, but believed the first example appears to absolve adjudicators of their obligation to recontact the medical source if that source is not a specialist.

Response: We did not adopt this comment because whether to obtain additional evidence often depends on specific case facts, and because we believe it is better to present examples in training and other instructions. As we indicated in response to the comments above, we plan to conduct training on these final rules and will provide additional guidance on when adjudicators should recontact a person's medical source(s) first for additional information. We disagree with the commenter that the first example about obtaining a CE with a specialist would absolve adjudicators of any recontact

¹² 76 FR at 20283.

¹³ 76 FR at 20283.

¹⁴ 76 FR at 20283.

obligation if a person's medical source is not a specialist. Depending on the nature of the impairment or the additional information we need, it may be more appropriate for us to recontact the person's medical source(s) first before considering the purchase of a CE with a specialist. Because the situations when we need to obtain additional information are so variable, the type of guidance the commenter asked us to include would be too extensive to put in the regulation.

Comment: Several commenters said the proposed modification to the recontact requirement eliminates the "treating physician rule," which relates to our regulations on how we weigh medical opinions from treating sources and the deference we give these opinions under certain circumstances.¹⁵ These commenters also said that the proposed modification would diminish the role and weight of medical opinion evidence we receive from treating sources in our determination of disability.

Response: We did not propose any changes to our regulations on how we weigh treating source opinions in the NPRM. In addition, we disagree that modification of our recontact requirement diminishes the importance of medical evidence we receive from treating sources. As we described in response to the comments above, we have rules regarding how we obtain and consider evidence from a person's medical source(s) and rules that govern the purchase and use of CEs. These rules explain how we apply the provisions of the Act that require us to make "every reasonable effort" to obtain medical evidence from the individual's treating physician before we consider purchase of a CE.

¹⁵ See §§ 404.1527 and 416.927 for our rules on how we weigh medical opinion evidence, including opinions from treating sources.

We believe these rules provide adequate safeguards against possible attempts to undermine the evidence received from a person's medical source(s), and we expect our adjudicators to follow these rules.

Comment: One commenter expressed concern about the impact our proposed modification of the recontact requirement could have at the hearings level. The commenter believed that giving administrative law judges the option of contacting someone other than a person's treating source(s) for additional information would make the proceeding adversarial. The commenter pointed out that our judges have a duty to develop the record fully and fairly and should seek out the most reliable evidence which, the commenter said, is "presumptively" from a treating source.

Response: We do not believe that modifying the recontact requirement will change the non-adversarial format of our administrative hearings. We agree that our judges have a duty to develop the record fully and fairly. Our rules regarding the development of medical evidence from a person's medical source(s) and the purchase of CEs apply equally to the judges. As we have discussed at length in our prior responses to comments, we believe these rules prevent both abuse of the CE process and any attempt to undermine the evidence received from treating sources at all levels of the disability determination process, including the hearings level.

Comment: Several commenters said the proposed modification to our recontact requirement is unnecessary because there is already an exception to this requirement in

our current regulations that will permit adjudicators to contact someone other than the person's medical source first.

Response: We disagree with the commenters. Currently, the only exception to the recontact requirement is if we know from past experience that the medical source either cannot or will not provide the additional information we need.¹⁶ We believe, however, that this exception is not always broad enough to cover other situations when contact with a different source first would be more appropriate. In the NPRM, we gave the example of evidence received from a medical source referencing a claimant's return to work.¹⁷ Although the medical source may know something about this issue, the claimant would usually be a more appropriate source to contact first, because the claimant would be more likely to have all of the related information we need regarding work issues. Under our current rules, however, the adjudicator would first have to recontact the medical source for additional information, which could delay adjudicating the case. Therefore, we have found that our current requirement, even with its one exception, is simply too rigid at a time when our adjudicators need more flexibility in developing evidence as quickly and efficiently as possible.

Comment: One commenter said that the proposed regulation does not require us to document the case record when we know from past experience that a medical source either cannot or will not provide the additional information we need. This commenter

¹⁶ See §§ 404.1512(e)(2) and 416.912(e)(2).

¹⁷ See 76 FR at 20283.

also said it is unfair for us to assume that a medical source will not respond to an inquiry just because that source has been uncooperative in the past.

Response: Our current instructions require adjudicators to document the case development summary whenever they do not attempt to recontact a medical source because of past experience with that source.¹⁸ Although these instructions are sub-regulatory, we expect our adjudicators to follow them, and we do not expect to change this procedure when we publish these final rules. In response to the commenter's other concern, we do not believe it is reasonable to require our adjudicators to attempt to recontact a medical source when we know from past experience that this source either cannot or will not provide the information we need. Of course, adjudicators may recontact such a source whenever they have reason to believe that the source may provide information for a particular claimant. To require recontact in all cases, however, on the chance that the source might be cooperative, would not promote efficient claims adjudication.

Comment: Several commenters said that rather than modifying our recontact requirement, we should instead find better ways to develop the evidence we need from a person's medical source(s). Some of these commenters recommended that we send a medical source statement form to elicit information targeted to our specific disability criteria or templates of condition-specific questions at the same time we send our general request for records to a person's medical source(s). Other commenters suggested that we establish even more requirements for recontacting medical sources. For example, they

¹⁸ POMS DI 22505.008B.

suggested that we require adjudicators to contact the claimant, a family member, or the claimant's representative for assistance in recontacting the medical source(s), or that we require adjudicators to make at least three attempts to recontact a medical source(s) before ordering a CE. One of these commenters also suggested that we wait 45 days for feedback from the claimant or claimant's representative after requesting assistance in recontacting a medical source(s). Several commenters said that claimants' representatives can assist our adjudicators in getting the information they need and said we should develop better lines of communication between them. Another commenter suggested that we might be able to improve our ability to obtain additional information from a person's medical source(s) by finding out whether the claimant is receiving services or support from another source that could assist us in getting information from treating sources, or by establishing a telephone dictation system for medical sources that may not have clerical support, or by paying treating sources that are unwilling to provide additional information without some financial compensation.

Response: We did not adopt the comments. We believe our adjudicators need more flexibility to conduct case development in the most efficient way possible. Requiring them to repeatedly contact the medical source(s), or requiring them to wait for feedback or to contact another source for assistance in recontacting the medical source(s), regardless of the nature of the inconsistency or insufficiency in the evidence received, would not serve these goals. As we explained in the NPRM, "[d]epending on the nature of the inconsistency or insufficiency, there may be other, more appropriate sources from

whom we could obtain the information we need."¹⁹ Therefore, adjudicators need more, not less, discretion than our current recontact requirement provides to obtain the needed information from the most appropriate source. In addition, we are confident that we will be able to identify and correct any problems in the exercise of that discretion, should they occur, through our quality review process.

In further response to the commenters' suggestions, it is important to note that we are always striving to find better methods of collecting medical evidence, such as using Health Information Technology (HIT). As we explained in the NPRM, using HIT will enable our adjudicators to access a person's complete medical records upon receipt of a claim and reduce the number of CEs.²⁰ In addition, our adjudicators already use a variety of methods to obtain the evidence we need to determine disability, including the use of forms and tailored requests for information from treating sources, which several commenters suggested. Our adjudicators also routinely contact claimants, representatives, and third parties designated by claimants for assistance in obtaining evidence. We will continue to explore ways of improving the medical evidence collection process, but there are many factors, especially cost, which we must consider before we can require any particular method of obtaining medical evidence.

Moreover, we believe there should be a variety of methods available to our adjudicators, and that they should have the flexibility to determine which method of development would be the most appropriate given the facts in each case. We do not

¹⁹ 76 FR at 20282.

²⁰ 76 FR at 20283.

believe there is any one method that is always the most suitable or efficient, and therefore, do not believe we should require any of the suggestions made by the commenters in all cases.

Comment: Several commenters noted our reference to HIT in the NPRM and said that using HIT cannot justify modifying the recontact requirement, because HIT is not yet widespread.

Response: We did not intend our reference to HIT in the NPRM to be a justification for the proposed change to the recontact requirement. Instead, we mentioned HIT simply to point out that we are engaging in other efforts to improve the medical evidence collection process. Many of the commenters encouraged such efforts, and several of these commenters agreed with our view that increased use of HIT will speed our review of medical evidence, reduce the need to recontact treating sources, and reduce the number of CEs we might otherwise need to purchase.²¹ Although HIT is still in the early phases, we are positioning our agency to take full advantage of this technology as it becomes more widespread in the medical community.

Comment: One commenter thought the organization of the proposed changes to our regulations on how we collect and consider evidence of disability was confusing and would be clearer if we reorganized those changes.

²¹ 76 FR at 20283.

Response: We did not adopt the comment. We received many comments on the NPRM, and it appears that the commenters generally had a good understanding of how we proposed to modify the recontact requirement. In addition, as we noted in the NPRM, we combined our rules on how we collect and consider evidence into one new section (final §§ 404.1520b and 416.1520b), "so that these rules are easier to understand and apply."²² We believe the consolidation of our rules into one section will achieve these goals.

REGULATORY PROCEDURES

Executive Order 12866 as supplemented by Executive Order 13563

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule meets the requirements for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB reviewed the final rule.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it only affects individuals. Accordingly, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

²² 76 FR at 20283.

Paperwork Reduction Act

This rule does not create any new or affect any existing collections and, therefore, does not require Office of Management Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security – Disability Insurance; 96.002, Social Security – Retirement Insurance; 96.004, Social Security – Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public Assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Michael J. Astrue,
Commissioner of Social Security.

For the reasons set out in the preamble, we are amending subpart P of part 404 and subpart I of part 416 of chapter III of title 20 Code of Federal Regulations as set forth below:

Part 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE
(1950-)

Subpart P – [Amended]

1. The authority citation for subpart P of part 404 is revised to read as follows:

AUTHORITY: Secs. 202, 205(a)-(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)-(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Amend §404.1512 by revising the third sentence of paragraph (a) and the last sentence of paragraph (b)(6), by removing paragraph (e), redesignating paragraph (f) as (e) and revising the heading and first sentence, and redesignating paragraph (g) as (f), to read as follows:

§404.1512 Evidence.

(a) * * * This means that you must furnish medical and other evidence that we can use to reach conclusions about your medical impairment(s) and, if material to the determination of whether you are disabled, its effect on your ability to work on a sustained basis. * * *

(b) * * *

(6) * * * See §404.1527(e)(2)-(3).

* * * * *

(e) Obtaining a consultative examination. We may ask you to attend one or more consultative examinations at our expense. * * *

* * * * *

3. Amend §404.1519a by revising paragraph (a), revising paragraph (b) introductory text, adding “or” after the semi-colon in paragraph (b)(3), removing paragraph (b)(4), and redesignating paragraph (b)(5) as (b)(4), to read as follows:

§404.1519a When we will purchase a consultative examination and how we will use it.

(a) General. If we cannot get the information we need from your medical sources, we may decide to purchase a consultative examination. See §404.1512 for the procedures we will follow to obtain evidence from your medical sources and §404.1520b

for how we consider evidence. Before purchasing a consultative examination, we will consider not only existing medical reports, but also the disability interview form containing your allegations as well as other pertinent evidence in your file.

(b) Situations that may require a consultative examination. We may purchase a consultative examination to try to resolve an inconsistency in the evidence, or when the evidence as a whole is insufficient to allow us to make a determination or decision on your claim. Some examples of when we might purchase a consultative examination to secure needed medical evidence, such as clinical findings, laboratory tests, a diagnosis, or prognosis, include but are not limited to:

* * * * *

4. Amend §404.1520 by adding a sentence to the end of paragraph (a)(3) to read as follows:

§404.1520 Evaluation of disability in general.

(a) * * *

(3) * * * See §404.1520b.

* * * * *

5. Add §404.1520b to read as follows:

§404.1520b How we consider evidence.

After we review all of the evidence relevant to your claim, including medical opinions (see §404.1527), we make findings about what the evidence shows. In some situations, we may not be able to make these findings because the evidence in your case record is insufficient or inconsistent. We consider evidence to be insufficient when it does not contain all the information we need to make our determination or decision. We consider evidence to be inconsistent when it conflicts with other evidence, contains an internal conflict, is ambiguous, or when the medical evidence does not appear to be based on medically acceptable clinical or laboratory diagnostic techniques. If the evidence in your case record is insufficient or inconsistent, we may need to take additional actions, as we explain in paragraphs (b) and (c) of this section.

(a) If all of the evidence we receive, including all medical opinion(s), is consistent and there is sufficient evidence for us to determine whether you are disabled, we will make our determination or decision based on that evidence.

(b) If any of the evidence in your case record, including any medical opinion(s), is inconsistent, we will weigh the relevant evidence and see whether we can determine whether you are disabled based on the evidence we have.

(c) If the evidence is consistent but we have insufficient evidence to determine whether you are disabled, or if after weighing the evidence we determine we cannot reach a conclusion about whether you are disabled, we will determine the best way to resolve the inconsistency or insufficiency. The action(s) we take will depend on the nature of the inconsistency or insufficiency. We will try to resolve the inconsistency or insufficiency by taking any one or more of the actions listed in paragraphs (c)(1) through (c)(4) of this section. We might not take all of the actions listed below. We will consider any additional evidence we receive together with the evidence we already have.

(1) We may recontact your treating physician, psychologist, or other medical source. We may choose not to seek additional evidence or clarification from a medical source if we know from experience that the source either cannot or will not provide the necessary evidence. If we obtain medical evidence over the telephone, we will send the telephone report to the source for review, signature, and return;

(2) We may request additional existing records (see §404.1512);

(3) We may ask you to undergo a consultative examination at our expense (see §§404.1517 through 404.1519t); or

(4) We may ask you or others for more information.

(d) When there are inconsistencies in the evidence that we cannot resolve or when, despite efforts to obtain additional evidence, the evidence is insufficient to determine whether you are disabled, we will make a determination or decision based on the evidence we have.

6. Amend §404.1527 as follows:

- a. Revise paragraph (b);
- b. Remove paragraph (c);
- c. Redesignate paragraphs (d) through (f) as (c) through (e);
- d. In newly redesignated paragraph (c) introductory text remove “(d)(2)” and add in its place “(c)(2)”;
- e. In newly redesignated paragraph (c)(2) introductory text remove “(d)(2)(i) and (d)(2)(ii)” and add in its place “(c)(2)(i) and (c)(2)(ii)” and remove “(d)(3) through (d)(6)” and add in its place “(c)(3) through (c)(6)”;
- f. In newly redesignated paragraph (d)(3) remove “(e)(1) and (e)(2)” and add in its place “(d)(1) and (d)(2)”;
- g. In newly redesignated paragraph (e) introductory text remove “(a) through (e)” and add in its place “(a) through (d)”;
- h. In newly redesignated paragraph (e)(2)(ii) remove “(a) through (e)” and add in its place “(a) through (d)”;
- i. In newly redesignated paragraph (e)(2)(iii) remove “(a) through (e)” and add in its place “(a) through (d)”, to read as follows:

§404.1527 Evaluating opinion evidence.

* * * * *

(b) *How we consider medical opinions.* In determining whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. See §404.1520b.

* * * * *

7. Amend §404.1545 by revising the fifth sentence of paragraph (a)(3) to read as follows:

§ 404.1545 Your residual functional capacity.

(a) * * *

(3) * * * (See §§404.1512(d) through (e).) * * *

* * * * *

PART 416 – SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND,
AND DISABLED

Subpart I— [Amended]

8. The authority citation for subpart I of part 416 continues to read as follows:

AUTHORITY: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

9. Amend §416.912 by revising the third sentence of paragraph (a) and the last sentence of paragraph (b)(6), by removing paragraph (e), redesignating paragraph (f) as (e) and revising the heading and first sentence, and redesignating paragraph (g) as (f), to read as follows:

§416.912 Evidence.

(a) * * * If material to the determination whether you are disabled, medical and other evidence must be furnished about the effects of your impairment(s) on your ability to work, or if you are a child, on your functioning, on a sustained basis. * * *

(b) * * *

(6) * * * See §416.927(e)(2)–(3).

* * * * *

(e) Obtaining a consultative examination. We may ask you to attend one or more consultative examinations at our expense. * * *

* * * * *

10. Amend §416.919a by revising paragraph (a), revising paragraph (b) introductory text, adding "or" after the semi-colon in paragraph (b)(3), removing paragraph (b)(4), and redesignating paragraph (b)(5) as (b)(4), to read as follows:

§416.919a When we will purchase a consultative examination and how we will use it.

(a) General. If we cannot get the information we need from your medical sources, we may decide to purchase a consultative examination. See §416.912 for the procedures we will follow to obtain evidence from your medical sources and §416.920b for how we consider evidence. Before purchasing a consultative examination, we will consider not only existing medical reports, but also the disability interview form containing your allegations as well as other pertinent evidence in your file.

(b) Situations that may require a consultative examination. We may purchase a consultative examination to try to resolve an inconsistency in the evidence or when the

evidence as a whole is insufficient to support a determination or decision on your claim.

Some examples of when we might purchase a consultative examination to secure needed medical evidence, such as clinical findings, laboratory tests, a diagnosis, or prognosis, include but are not limited to:

* * * * *

11. Amend §416.920 by adding a sentence to the end of paragraph (a)(3) to read as follows:

§416.920 Evaluation of disability in general.

(a) * * *

(3) * * * See §416.920b.

* * * * *

12. Add §416.920b to read as follows:

§416.920b How we consider evidence.

After we review all of the evidence relevant to your claim, including medical opinions (see §416.927), we make findings about what the evidence shows. In some situations, we may not be able to make these findings because the evidence in your case record is insufficient or inconsistent. We consider evidence to be insufficient when it does not contain all the information we need to make our determination or decision. We consider evidence to be inconsistent when it conflicts with other evidence, contains an internal conflict, is ambiguous, or when the medical evidence does not appear to be based on medically acceptable clinical or laboratory diagnostic techniques. If the evidence in your case record is insufficient or inconsistent, we may need to take additional actions, as we explain in paragraphs (b) and (c) of this section.

(a) If all of the evidence we receive, including all medical opinion(s), is consistent and there is sufficient evidence for us to determine whether you are disabled, we will make our determination or decision based on that evidence.

(b) If any of the evidence in your case record, including any medical opinion(s), is inconsistent, we will weigh the relevant evidence and see whether we can determine whether you are disabled based on the evidence we have.

(c) If the evidence is consistent but we have insufficient evidence to determine whether you are disabled, or if after weighing the evidence we determine we cannot reach a conclusion about whether you are disabled, we will determine the best way to resolve the inconsistency or insufficiency. The action(s) we take will depend on the nature of the

inconsistency or insufficiency. We will try to resolve the inconsistency or insufficiency by taking any one or more of the actions listed in paragraphs (c)(1) through (c)(4) of this section. We might not take all of the actions listed below. We will consider any additional evidence we receive together with the evidence we already have.

(1) We may recontact your treating physician, psychologist, or other medical source. We may choose not to seek additional evidence or clarification from a medical source if we know from experience that the source either cannot or will not provide the necessary evidence. If we obtain medical evidence over the telephone, we will send the telephone report to the source for review, signature, and return;

(2) We may request additional existing records (see §416.912);

(3) We may ask you to undergo a consultative examination at our expense (see §§416.917 through 416.919t); or

(4) We may ask you or others for more information.

(d) When there are inconsistencies in the evidence that we cannot resolve or when, despite efforts to obtain additional evidence, the evidence is insufficient to determine whether you are disabled, we will make a determination or decision based on the evidence we have.

13. Amend §416.927 as follows:

- a. Revise paragraph (b);
- b. Remove paragraph (c);
- c. Redesignate paragraphs (d) through (f) as (c) through (e);
- d. In newly redesignated paragraph (c) introductory text remove “(d)(2)” and add in its place “(c)(2)”;
- e. In newly redesignated paragraph (c)(2) introductory text remove “(d)(2)(i) and (d)(2)(ii)” and add in its place “(c)(2)(i) and (c)(2)(ii)” and remove “(d)(3) through (d)(6)” and add in its place “(c)(3) through (c)(6)”;
- f. In newly redesignated paragraph (d)(3) remove “(e)(1) and (e)(2)” and add in its place “(d)(1) and (d)(2)”;
- g. In newly redesignated paragraph (e) introductory text remove “(a) through (e)” and add in its place “(a) through (d)”;
- h. In newly redesignated paragraph (e)(2)(ii) remove “(a) through (e)” and add in its place “(a) through (d)”;
- i. In newly redesignated paragraph (e)(2)(iii) remove “(a) through (e)” and add in its place “(a) through (d)”, to read as follows:

§416.927 Evaluating opinion evidence.

* * * * *

(b) *How we consider medical opinions.* In determining whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. See §416.920b.

* * * * *

14. Amend §416.945 by revising the fifth sentence of paragraph (a)(3) to read as follows:

§ 416.945 Your residual functional capacity.

(a) * * *

(3) * * * (See §§416.912(d) through (e).) * * *

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